

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Chicago Avenue Partners, Ltd.,	)	Case Type: Property Damage
	)	
Plaintiff,	)	Court Case No. 05-1898 PAM/RLE
	)	
vs.	)	Judge Paul A. Magnuson
	)	Magistrate Judge
Broan-Nutone, LLC,	)	Raymond L. Erickson
	)	
Defendant.	)	<b>Defendant Broan-Nutone, LLC's</b>
	)	<b>Responses to Chicago Avenue</b>
	)	<b>Partners Ltd.'s Request for</b>
	)	<b>Production of Documents</b>

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TO: Plaintiff above named and its attorney, Andrea Kiehl, Flynn, Gaskins & Bennett, 333 South Seventh Street, Suite 2900, Minneapolis, MN 55402:

Defendant Broan-Nutone, LLC ("Broan-Nutone") reserves all objections as to relevancy, materiality, burden and vagueness. Broan-Nutone also objects to any requests that seek information protected from disclosure by the attorney/client privilege or the work product doctrine. Broan-Nutone also objects to these requests to the extent they seek to enlarge Broan-Nutone's responsibilities beyond the requirements of the Federal Rules of Civil Procedure. Broan-Nutone's responses herein are without waiver of or prejudice to any such objections.

These responses contain the best information presently available to Broan-Nutone, including its present state of recollection, and are given subject to such refreshing of recollection and such additional knowledge of facts as may result from either discovery or further fact and investigation by Broan-Nutone. In the event that discovery and other pretrial preparation develops further information with respect to the requests, Broan-Nutone hereby reserves the right to supplement, clarify, revise or correct any or all of these responses at any time.

Broan-Nutone objects to these Requests on the grounds that the subject ventilation fan can not be specifically identified. The fan was manufactured by Broan Mfg. Co. Inc. However, the exact product name, model number, serial number or date of manufacture is unknown. Moreover, the charred remains of the fan indicate that the internal parts were not original equipment. Subject to these evidentiary and identification deficiencies, and without waiving any objections, Broan-Nutone responds as follows:

### **RESPONSES**

**REQUEST NO. 1:** All records or other documents relating to the manufacture and design, including design changes, for the Broan-Nutone fan that is the subject matter of this lawsuit.

**RESPONSE:** Documents relating to the fan are attached to these responses and bates numbered BN 0001 - 0123.

**REQUEST NO. 2:** All logs, diaries, email correspondence, brochures, manuals, memoranda, correspondence, or notices relating to the Broan-Nutone fan that is the subject matter of this lawsuit.

**RESPONSE:** See Response to Request No. 1.

**REQUEST NO. 3:** All records, memoranda or other documents that reflect, relate to, refer to or describe the policies, procedures, and/or standards (both external and internal) utilized by you with respect to the design, manufacture, maintenance, service, inspection, and/or testing of the subject Broan-Nutone fan, including but not limited to, such records regarding the prevention of risks of fire hazard.

**RESPONSE:** Unknown because the fan can not be identified.

**REQUEST NO. 4:** All reports of fires, accidents and injuries arising out of the use and/or installation of Broan-Nutone ventilation fans for twenty (20) years prior to the subject fire and for every year subsequent to the subject fire.

**RESPONSE:** Unknown because the fan can not be identified.

**REQUEST NO. 5:** All records, manuals, memoranda or other documents created by Broan-Nutone or some other entity on Broan-Nutone's behalf, which accompanied the subject Broan-Nutone fan at the time of purchase.

**RESPONSE:** Unknown.

**REQUEST NO. 6:** All reports, memoranda, correspondence or other documents regarding or concerning any investigation of the Broan-Nutone fan that is the subject of this lawsuit that was performed by you or someone on your behalf.

**RESPONSE:** Unknown because the fan can not be identified.

**REQUEST NO. 7:** All liability insurance policies which could potentially be called upon to respond to claims asserted in this action, and any disclaimers or reservation of rights letters issued by the insurance carrier.

**RESPONSE:** A copy of the policy in effect at the time of the loss has been provided and bates numbered BN 0001 – 0005.

**REQUEST NO. 8:** All statements taken by your or anyone acting on your behalf of any person(s) concerning the subject Broan-Nutone ventilation fan or the subject fire.

**RESPONSE:** None.

**REQUEST NO. 9:** All reports prepared by a person who is expected to testify as an expert witness on your behalf at the trial of this matter.

**RESPONSE:** Such reports will be provided in accordance with the Court's scheduling order.

**REQUEST NO. 10:** All photographs or videotapes relating to the subject lawsuit.

**RESPONSE:** Broan-Nutone has none. Experts' photos are provided at BN 0089 - 0123.

**REQUEST NO. 11:** All contracts, proposals, agreements, or other documents executed or received by you or anyone acting on your behalf regarding the purchase, design, manufacture or sale of the subject Broan-Nutone ventilation fan.

**RESPONSE:** None.

**REQUEST NO. 12:** All complaints, allegations, notices, reports, correspondence memoranda or other documents pertaining to fires caused or allegedly caused by the Broan-Nutone fan that is the subject of this lawsuit, received by or made known to Broan-Nutone within twenty (20) years prior to the date of the subject fire.

**RESPONSE:** Unknown because the fan can not be identified.

**REQUEST NO. 13:** All documents relating to quality control and/or product safety by or on behalf of Broan-Nutone in the twenty (20) years preceding the fire that is the subject matter of Plaintiff's Complaint.

**RESPONSE:** See Response to No. 1. Otherwise, unknown because the fan can not be identified.

**REQUEST NO. 14:** All reports, memoranda, correspondence or other documents which analyze, discuss or otherwise refer to any characteristic of the ventilation fan at issue in this matter related to fire or other hazards.

**RESPONSE:** Unknown because the fan can not be identified.

**REQUEST NO. 15:** All documents relating to any internal or external testing conducted regarding the Broan-Nutone ventilation fan that is the subject matter of this lawsuit.

**RESPONSE:** See generally, bates number BN 0006 – 0062.

**REQUEST NO. 16:** All documents relating to Broan-Nutone's preparation, developments and implementation of any warnings for the ventilation fan that is the subject matter of Plaintiff's Complaint.

**RESPONSE:** Unknown because the fan can not be identified.

**REQUEST NO. 17:** All documents sent to or received from Consumer Product Safety Commission relating to the ventilation fan which is the subject matter of the Plaintiff's Complaint.

**RESPONSE:** Unknown because the fan can not be identified.

**REQUEST NO. 18:** All documents relating to attempts by Broan-Nutone to warn customers of any problems or dangers associated with the ventilation fan at issue in this matter, including any warnings, notices and communications after the manufacture and sale of the ventilation fan.

**RESPONSE:** A copy of the Installation Instruction documents has been provided.

**REQUEST NO. 19:** All documents relating to changes to the design of the ventilation fan at issue in this case in the last twenty (20) years.

**RESPONSE:** Unknown because the fan can not be identified.

**REQUEST NO. 20:** Copies of all blueprints, sketches, diagrams, drawings, schematics and/or other specifications for the subject Broan-Nutone ventilation fan. Plaintiff is willing to sign a confidentiality agreement relating to the production of these documents.

**RESPONSE:** Copies relating to the fan are attached to these responses and bates numbered BN 0063 – 0088.

**REQUEST NO. 21:** All contracts, agreements, or correspondence between Broan-Nutone and any entity or individual which in any way relate to liability, investigation, indemnification, or defense of claims arising from the use of the ventilation fan.

**RESPONSE:** See Insurance Policy bates numbered BN 0001 – 0005.

**REQUEST NO. 22:** All contracts, agreements, or correspondence between Broan-Nutone and the manufacturers, sellers, and/or distributors of any component parts used in the ventilation fan.

**RESPONSE:** Unknown because the fan can not be identified and the charred remains do not appear to be original equipment.

**REQUEST NO. 23:** All documents which in any way relate to or detail voluntary or mandatory recalls, retrofits, or modification programs, for the ventilation fan.

**RESPONSE:** None.

**REQUEST NO. 24:** All studies analyses, and other documents relating to any or all failure modes of the ventilation fan that potentially result in fires.

**RESPONSE:** See UL tests bates numbered BN 0006 – 0062.

**REQUEST NO. 25:** All documents referred to, reviewed by, relied on, or generated by any expert whom you intend to call as a witness at the trial of this matter.

**RESPONSE:** These documents will be provided with the expert report.

**REQUEST NO. 26:** All documents which support your affirmative defense that Plaintiff's claims are barred by the statute of limitations.

**RESPONSE:** See Answer to Interrogatory No. 15.

**REQUEST NO. 27:** All documents which support your general denial that the ventilation fan was the cause of the subject fire.

**RESPONSE:** See email from Tom Lawrence bates numbered CHI 0813. See also Mark Bishop's cause and origin report.

**REQUEST NO. 28:** All documents which support your affirmative defense that any damages to Plaintiff were "caused or contributed to by acts, omissions, faults, negligence, assumption of the risk, misuse or improper conduct of Plaintiff."

**RESPONSE:** See Fire Report of Virgil Carlson.

**REQUEST NO. 29:** All documents which support your affirmative defense that any damages to Plaintiff were "caused or contributed to by acts, omissions, faults, negligence, assumption of the risk, misuse or improper conduct of those over whom Defendant Broan had no control."

**RESPONSE:** See Response to Request No. 27.

**REQUEST NO. 30:** All documents that support your affirmative defense that Plaintiff has failed to join indispensable parties.

**RESPONSE:** See Plaintiffs' Complaint.

DATED: June 26, 2006

**FOLEY & MANSFIELD, P.L.L.P.**

By: W.A. LeMire  
William A. LeMire (20304X)  
Samuel S. Rufer (330735)

250 Marquette Avenue, Suite 1200  
Minneapolis, Minnesota 55401  
Telephone: (612) 338-8788

**ATTORNEYS FOR DEFENDANT  
BROAN-NUTONE LLC**

## **AFFIDAVIT OF SERVICE BY MESSENGER**

STATE OF MINNESOTA :  
 : S.S.  
COUNTY OF HENNEPIN :

Carol M. Held, being first duly sworn on oath, deposes and says that she is a secretary in the office of Foley & Mansfield, P.L.L.P., Attorneys at Law, 250 Marquette Avenue, Suite 1200, Minneapolis, Minnesota 55401, and that on the 26<sup>th</sup> day of June, 2006, she made service of the attached

Defendant Broan-Nutone, LLC's Responses to Chicago Avenue Partners Ltd.'s Request  
for Production of Documents

by serving via messenger a true and correct copy thereof to:

Andrea D. Kiehl, Esq.  
Flynn, Gaskins & Bennett, L.L.P.  
333 South Seventh Street, Suite 2900  
Minneapolis, MN 55402

Carol M. Held  
Carol M. Held

Subscribed and sworn to before me this  
26<sup>th</sup> day of June, 2006.

Angela D Clark  
Notary Public

